IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 427 of 2000

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

V SRINIVAS

Versus

STATE OF GUJARAT

Appearance:

MR SS PANESAR for Petitioners

MR ND GOHIL, APP, for Respondent No. 1

MR MUKTESH V PATEL for Respondent No. 2

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 30/03/2000

ORAL JUDGEMENT

1. This is an application under section 482 of the Criminal Procedure Code at the instance of the two petitioners who are the original accused nos.1 and 2 respectively, challenging and praying for quashing of the complaint filed by respondent no.2 herein (original complainant) and for quashing the order passed by the

learned JMFC in the inquiry held under section 202 of the Criminal Procedure Code.

2. The complainant had filed a criminal complaint in the court of learned JMFC alleging the commission of offences by accused nos.1 and 2, under section 3(1)(ix) and (x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

3. Learned JMFC first examined the complainant under section 200 of Criminal Procedure Code and then conducted an inquiry under section 202 of the said Code. As a result thereof by order passed in Criminal Inquiry Complaint No.7/99, he issued bailable warrants against the accused nos.1 and 2.

4. The present applicants being the original accused nos.1 and 2 seek to quash the complaint as also the order passed below Exh.1 in the said inquiry complaint on the ground that no offence as alleged is made out on the face of the complaint.

5. It is common ground and even as per learned counsel for the respondent complainant the offence alleged to have been committed by the accused would be under section 3(1)(ix) and (x) of the said Act, and no other provision.

6. However, as a result of the hearing and discussion learned counsel for the respondent conceded that clause (ix) would not have any application to the facts of the case, even as alleged in the complaint, for the simple reason that there is no allegation against the accused even in the most round about manner that the accused gave any false or frivolous information to any public servant, etc. Thus, clause (ix) has no application at all.

7. The only other provision under which the offence possibly would lie would be clause (x). The said clause reads as under:

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"(x) intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view".

8. Learned counsel for the respondent was very vehement as regards the scandalous nature of the language

used by accused no.1 in the presence of the accused no.2 and addressed to the complainant. It at all such language was used, no doubt it would be scandalous, whether it amounted to an offence under the Act or not. However, the crux of the matter, and the question of law involved in the present application is not the fact whether such language was used or not used. The crux of the matter is that even assuming that such language was used, could it possibly amount to an offence under clause (x)?

8.1 The complaint specifically mentions in para 1 that the accused no.1 is a Senior Branch Manager of the Mogalesara Branch of the Life Insurance Corporation of India at Surat and that accused no.2 is the Assistant Branch Manager in the same branch.

9. In paragraph 2 of the complaint the complainant asserts that on the given day at 5.45 pm (which is after office hours as noted by the learned Magistrate in his order below inquiry under section 202) the complainant was on duty and he was called by accused no.1 "into his chamber". The complainant then entered the chamber of the accused no.1. The accused was asked to provide a glass of water. The complainant then went to fetch water and took some time to locate a glass in which to fill the water. Thereafter the complainant returned with the glass of water and "again entered the chamber of the accused no.1". It was at that point of time when the accused no.1 is alleged to have addressed the complainant in scandalous language, supported by the use of similar language on the part of accused no.2.

10. The rest of the complaint is not material on this point. However, the rest of the complaint devotes itself to the lethargy and inaction shown by the administrative superiors of the two accused, and the manner and method in which an administrative inquiry was held and how the complainant was placed under compulsion to give his statement only in a particular form and manner. Similar allegations have been made against the Commissioner of Police, Surat, the Police Station at Chowkbazar, the Collector of Surat, etc.

11. As aforesaid, the learned Magistrate has examined the complainant under section 200 of Cr.P.C. Learned Magistrate was perhaps overly influenced by the scandalous nature of the language used, and was also overly impressed by the administrative lethargy shown by the administrative superiors of the two accused. He was also critical of the inaction on the part of the superior

police officers. Be that as it may, the crux of the matter is whether the incident as narrated in detail by the complainant in his complaint would on the face of the complaint, amount to an offence under clause (x) referred to hereinabove. After much discussion learned counsel for the respondent was obliged to concede that the incident took place within the cabin of the Senior Branch Manager, and apart from the complainant and the second accused, no other person was present. Even otherwise it may be noted that the complaint does not refer to any other witness, and no witness has been cited in the complaint. This aspect has also been noted by learned Magistrate in his order passed in the inquiry under section 202 of Cr.PC. Thus, on the face of it when the alleged incident took place, within the cabin of the Senior Administrator within the office premises of the office building, and that too after office hours, it could not possibly be said that the accused committed the act "in any place within public view". This, in short, is the crux of the matter. Since the alleged action and the alleged utterances did not take place "in any place within public view", it cannot possibly be urged that such utterances, would constitute an offence within the meaning of clause (x) of the said Act.

12. In the premises aforesaid, the complaint on the face of it, does not disclose any offence within the meaning of section 3(1)(ix) and (x) of the said Act, and is therefore required to be quashed. Consequently the order passed by the learned JMFC below Exh.1 in Criminal Inquiry Complaint no.7/99 is also required to be quashed. Accordingly it is so held and directed. Both the complaint and the aforesaid order are quashed and set aside. Rule is made absolute accordingly.

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